

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

WENDT, LLP Successor in Interest to JOHN  
WENDT & SONS,

Plaintiff,

v.

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA and GEORGE R. DYE,

Defendants.

Case No. 1:18-cv-00311

**DEFENDANT THE PRUDENTIAL  
INSURANCE COMPANY OF  
AMERICA'S NOTICE OF  
REMOVAL OF CIVIL ACTION TO  
THE UNITED STATES DISTRICT  
COURT PURSUANT TO 28 U.S.C. §§  
1332, 1441, 1446, AND 1453**

TO THE JUDGES AND CLERK OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF INDIANA.

PLEASE TAKE NOTICE that Defendant THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA ("Prudential") contemporaneously with the filing of this Notice of  
Removal, hereby seeks removal of the below-referenced action from the Superior Court of Indiana,  
County of Allen, to the United States District Court for the Northern District of Indiana.

The removal is based on 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, specifically on the  
following grounds:

1. On August 20, 2018, Plaintiff WENDT, LLP, Successor in Interest to JOHN  
WENDT & SONS ("Plaintiff") filed a Complaint with the Commercial Court for the Superior  
Court of the State of Indiana, County of Allen, Case No. 02D02-1808-PL-000288 (the "Action").  
Prudential received a copy of the Summons and Complaint in the Action on August 24, 2018, via  
certified mail dated August 22, 2018. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of  
Plaintiff's Summons and Complaint with which Prudential has been served in the Action are  
attached and collectively made a part hereof as **Exhibit A**.

2. In the Action, Plaintiff alleges breach of contract, negligence, and equitable  
estoppel against Prudential, and seeks money damages and other relief in connection with

Plaintiff's claimed entitlement to death benefits as the successor in interest to the named beneficiary to a life insurance policy with a death benefit of \$100,000, issued to Jere A. Wendt (deceased) (the "Policy"). (Complaint ¶¶ 8, 23-36.) Plaintiff alleges professional negligence against Mr. Wendt's former insurance broker GEORGE R. DYE ("Mr. Dye"), and seeks money damages and other relief in connection with the Policy. (Complaint ¶¶ 37-39.)

3. This Court has jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332(a) and 1441(b) because there is complete diversity of citizenship between all Plaintiffs and all Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

### **DIVERSITY OF CITIZENSHIP**

4. For the purpose of citizenship, an individual is a citizen of a state in which they are domiciled. *Dakuras v. Edwards*, 312 F.3d 256, 258 (7th Cir. 2002). Where an action involves a limited liability partnership, such partnership is considered a citizen of every jurisdiction of which any partner is a citizen. *Indiana Gas Co. v. Home Ins. Co.*, 141 F.3d 314, 316 (7th Cir. 1998); *Conk v. Richards & O'Neil, LLP*, 77 F. Supp. 2d 956, 960 (S.D. Ind. 1999). For diversity purposes, "a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

5. According to the Complaint, Plaintiff is a domestic limited liability partnership formed under the laws of the State of Indiana, with a principal place of business in Wabash County, Indiana. (Complaint ¶ 1.) On information and belief, all of the partners of Plaintiff are residents of Wabash County, Indiana.

6. According to the Complaint, Defendant Mr. Dye is a resident of Sumter County, Florida. (Complaint ¶ 3.)

7. Defendant Prudential is incorporated in New Jersey and its principal place of business is in New Jersey.

8. Thus, there is complete diversity of citizenship between all Plaintiffs and all Defendants.

**AMOUNT IN CONTROVERSY**

9. Plaintiff's Complaint is silent as to the total amount in controversy, and seeks judgment for "all damages relating to this claim, attorney's fees, costs, and all other relief just and proper." (Complaint ¶¶ 25, 29, 36, and 39.) However, Plaintiff claims entitlement to at least a \$100,000 life insurance policy benefit. (Complaint ¶ 8.) Therefore, the amount in controversy well exceeds the \$75,000 threshold for diversity jurisdiction.

**TIMELINESS OF REMOVAL**

10. Prudential received a copy of the Summons and Complaint in the Action on August 24, 2018.

11. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within thirty (30) days of Prudential's notice and receipt of Plaintiff's Complaint.

**VENUE IS PROPER**

12. The Action was filed in the Superior Court for the State of Indiana, County of Allen, Commercial Court, and venue is therefore proper in this Court pursuant to 28 U.S.C. §§ 94(a), 1391, 1441(a), and 1446.

**NOTICE TO PLAINTIFF AND SUPERIOR COURT**

13. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of Indiana, and pursuant to 28 U.S.C. § 1446(d), written notice of this filing and any attendant supplementary papers required by this Court will be given to Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the Court of the Superior Court of the County of Allen, Indiana.

**JOINDER OF DEFENDANT**

14. Prudential is informed and believes that Defendant Dye has been served in the Action. By counsel of record's below signature, it is certified that Dye consents to the removal of the Action to this Court.

Respectfully submitted,

SOPKO, NUSSBAUM, INABNIT & KACZMAREK

By: /s/ Brent E. Inabnit

Brent E. Inabnit, #17387-71

Christina Shakour, #34192-71

5<sup>th</sup> Floor – Plaza Building

210 South Michigan Street

South Bend, Indiana 46601

Telephone: (574) 234-3000

Facsimile: (574) 234-4220

Email: brenti@sni-law.com

Email: chrsitinas@sni-law.com

*Attorneys for Defendant, Prudential Insurance*

*Company of America*

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Craig R. Patterson ([cpatterson@beckmanlawson.com](mailto:cpatterson@beckmanlawson.com))

Taylor A. Beaty ([tbeaty@beckmanlawson.com](mailto:tbeaty@beckmanlawson.com))

Beckman Lawson, LLP

201 W. Wayne Street

Fort Wayne, Indiana 46802

Jeremy J. Grogg ([jgrogg@burtblee.com](mailto:jgrogg@burtblee.com))

Jared P. Baker ([jbaker@burtblee.com](mailto:jbaker@burtblee.com))

Burt, Blee, Dixon, Sutton & Bloom, LLP

200 E. Main Street, Suite 1000

Fort Wayne, Indiana 46802

/s/ Brent E. Inabnit

Brent E. Inabnit